Supreme Court, U. S.
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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-656

C. M. BRADFORD, ROBERT E. ROUDEBUSH, KENNETH BARTLETT, J. O. HEFLIN, O. D. RILEY, MARVIN WILLIAMS, L. H. CHRISTIAN, LELAND CRABB, EMORY HAYES and HARLAN ROLLINS, d/b/a HAYES and ROLLINS, W. J. KEITH, MAX LONGLEY, EDD PUTNAM, T. J. SIMS, and WILLIAM D. STEWART, JR.,

Petitioners,

VERSUS

PLAINS COTTON COOPERATIVE ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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OPINIONS BELOW

The findings and conclusions of the District Court for the Western District of Oklahoma are printed in Appendix B of the Petition, pages 15a-85a. The unanimous decision of the Court of Appeals for the Tenth Circuit is reported at 539 F.2d 1249 (10th Cir. 1976), *reh. denied*, and is printed in Appendix C to the Petition, pages 87a-99a; it will be cited herein as "Pet. App. C." Page references will be to the appendices in the Petition.

JURISDICTION

The Court of Appeals had jurisdiction under 28 U.S.C. § 1291. The judgment of the Court of Appeals was entered on July 9, 1976. The order of the Court of Appeals denying the petition for rehearing was entered on August 11, 1976. The Petition for a writ of certiorari was filed on November 9, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION

Did the Court of Appeals err in upholding the validity of written, signed contracts between Oklahoma farmers and their marketing cooperative?

STATEMENT

Plains Cotton Cooperative Association (hereafter "Plains") is a cotton marketing cooperative with its office in Lubbock, Texas. Its primary function is to find a market for the cotton produced by its member farmers. Beginning in March, 1973, and continuing through the summer of that year, Plains entered into more than 5,000 "forward" contracts covering the cotton crop to be grown later that year. The plaintiffs—farmers residing in southwestern Oklahoma—signed their contracts from one to three months before they planted their cotton crop.[1] Later in the fall of 1973, the price of cotton increased dramatically. Plaintiffs then filed suit to have the contracts declared invalid. Some of the cases were originally filed in state court and removed

[1] One farmer (Roudebush) had already planted his crop by the time he signed the contract.

to federal court. Federal jurisdiction in all cases was established on the basis of diversity of citizenship. The nine cases (two of which have multiple plaintiffs) were consolidated for trial.

The petitioners' so-called statement of facts contains many erroneous contentions. No useful purpose is here served by a point-by-point refutation of these errors. The contracting process, in general outline, was as follows: if a farmer decided to contract his crop, he would so inform the cooperative gin manager. The gin manager (or gin bookkeeper) then obtained the necessary information from the farmer to fill out the written contract form and to telephone the farmer's agreement to contract to Plains' Lubbock office. The information provided by the farmer to the gin manager included the total acres under cultivation on the contracted farm, the farm ASCS code number, the number of acres on the farm he intended to plant in cotton, the projected yield of the cotton, the number of the price schedule setting forth the agreed market price advance, the method of harvesting the cotton, and other information of that general nature. The gin manager telephoned Plains' office in Lubbock to ascertain that the most recent price schedule received at the gin was still in effect. If so, the gin manager advised Plains that the farmer was contracting his crop on that price schedule. The farmer and the gin manager (or gin bookkeeper) then signed the written contract, which was prepared in triplicate. When the telephone call was made by the gin manager to Plains, the information regarding the farmer's name, his ASCS number, acreage, price schedule, contract number, etc., was entered by the Plains employee

on a log and the gin manager was informed that the farmer's cotton was contracted.

When the written contract was completed and signed by the farmer and the gin manager (or gin bookkeeper), the gin manager mailed all three copies of each contract to Plains' office in Lubbock. Plains had in its employ a woman and some part-time girls who checked the written contracts against the information that was on the log to confirm that what was written on the contracts conformed to the information that the Plains employee had entered on the log during the telephone conversation with the gin manager. Having confirmed the written contracts, two signed copies were mailed back to the gin where the farmer had contracted his cotton. With but a single exception, all of the farmers executed their contracts in March and April, 1973.[2] Months went by. The price of cotton climbed. It was not until late August and early September that the farmers decided they didn't want the contracts after all. It was only then that they first communicated with Plains with the hope of finding a way out other than by performance of their agreements.

Plains had contracted with foreign and domestic mills for resale of the anticipated cotton production from the contracted farms when the contracts were agreed upon by telephone. Release of the growers from their contractual commitments would have meant financial ruin for Plains.

The Court of Appeals for the Tenth Circuit held that the contracts were entirely valid, and reversed the judgment of the trial court.

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[2] Mr. Roudebush executed his contracts on July 31, 1973.

ARGUMENT

The Petition is without merit. The petitioners have not advanced or suggested any valid basis for this Court to grant a review on writ of certiorari. The considerations governing review on certiorari set forth in this Court's Rule 19 are not met. This case involves construction of contracts under Oklahoma law, nothing more. There is no conflict with the applicable Oklahoma law, nor is any such conflict suggested by petitioners. There is no federal or constitutional question involved. The decision merely holds that the contracts in issue were valid under the provisions of the Uniform Commercial Code as adopted by the Oklahoma Legislature.

There is no conflict among the decisions of the courts of appeals on the matters at issue. On the contrary, as the Court of Appeals for the Tenth Circuit points out in its opinion, every court of appeals (as well as other courts) that considered forward contracts for the sale of the 1973 cotton crop, upheld the contracts. As stated by the Court of Appeals for the Tenth Circuit herein:

> "In addition to the suits at bar, the following suits were brought, all of which held that forward contracts for the 1973 crop were valid and enforceable. Riegel Fiber Corp. v. Anderson Gin Co., 5 Cir., 512 F.2d 784; Hohenberg Bros. Co. v. Killebrew, 5 Cir., 505 F.2d 643; Taunton v. Allenberg Cotton Co., M.D. Ga., 378 F. Supp. 34; Mitchell-Huntley Cotton Co., Inc. v. Waldrep, N.D. Ala., 377 F. Supp. 1215; Cone Mills Corp. v. Hurdle, N.D., Miss., 369 F. Supp. 426; Kimsey Cotton Co., Inc. v. Ferguson, Ga., 233 Ga. 962, 214 S.E.2d 360; and Harris v. Hine, 232 Ga. 183, 205 S.E.2d 847." (Pet. App. C at 89a)

In 1973, the price of cotton increased substantially *after* the farmers had signed their respective contracts. As revealed by the citation of cases in the quote above, much litigation ensued. Although subjected to nearly every imaginable legal attack, the forward contracts involving the 1973 crop were uniformly upheld. This Court commented on forward cotton contracts in *Allenberg Cotton Co.* v. *Pittman*, 419 U.S. 20, 95 S.Ct. 260, 42 L.Ed.2d 195 (1974). The Court of Appeals for the Tenth Circuit noted this *Allenberg* commentary in its opinion herein:

> "Forward contracts 'have become common in the American cotton marketing system.' Allenberg Cotton Co. v. Pittman, 419 U.S. 20, 26, 95 S. Ct. 260, 264, 42 L.Ed.2d 195. They protect a grower against a price decline, Ibid. When the price rises, 'the forward contract becomes relatively unprofitable' and the grower may have 'an economic incentive * * * to breach his contract and sell the cotton elsewhere.' Ibid. at n. 8. The buyer may protect himself by selling cotton 'in quantities approximating the expected yield' under his purchase contracts. Ibid. Alternatively, he may protect himself 'by "hedging," i.e., offsetting his purchases with a sale of futures contracts on the cotton exchange.' Ibid. a 26-27, 95 S. Ct. at 264. 'The stability of the position * * * [of the buyer] clearly depends on the integrity and enforceability of his contracts for purchase and resale.' Ibid. 419 U.S. at 27, 95 S. Ct. at 264 (footnote omitted)." (Pet. App. C at 88a, 89a)

The petitioners complain that the Court of Appeals for the Tenth Circuit refused to adopt certain findings of fact made by the trial court. The Court of Appeals certainly did refuse to adopt certain of the trial court's findings, and quite properly so, for such findings were clearly erroneous.

Indeed, in various instances the trial court's findings were directly contrary to the only proof, completely undisputed, on the matter. As previously noted, the Petition makes allegations of fact which are simply not correct. Contrary to the Petition's blanket assertions of material changes in the offers and acceptances regarding these contracts, the undisputed fact is that various of the farmers reviewed the price schedules in detail and had their copies of the contracts hand-delivered to them months before the price of cotton went up (the price rise, of course, thereby generating "a strong economic incentive for him to breach his contract." *Allenberg Cotton Co., Inc.* v. *Pittman*, 419 U.S. at 26, n. 8).

The petitioners' specifically cited "example" of the Tenth Circuit Court of Appeals allegedly making a holding "without any factual basis," appears on page 19 of the Petition, to-wit:

> "For example, the Court of Appeals held without any factual basis:
>
> 'The record shows that if the price had gone down, the growers would have held Plains obligated to buy their cotton. 539 F.2d at 1253. Appendix C at page 93a.' "

The fact is, the record showed *exactly* what the Court of Appeals said it did. Not to be prolix about the matter, the following question and answer reveal the truth:

> "Q. (to Petitioner Riley by counsel for Plains): If the price of cotton had fallen instead of increasing like it did, you would have expected Plains to pay the contract price for your coton?
>
> A. Yes." (Tr. App. 836)

The fact is, if the price had dropped instead of rising, there would have been no lawsuits and the farmers would have expected Plains to stand muster and pay the contract price for their cotton. The record makes this quite clear.

Putting to one side the trial court's clearly erroneous factual findings, the trial court made grievous errors of law: it totally failed and refused to apply the Uniform Commercial Code which was adopted by Oklahoma some 14 years before this case came on for trial. As stated by the Court of Appeals for the Tenth Circuit:

> "The validity of the contracts must be tested by Oklahoma law. The [trial] court relied on, and erroneously cited, an old Oklahoma statute * * * In 1961 Oklahoma adopted the Uniform Commercial Code, 12A O.S. § 1-101 et seq." (Pet. App. C at 92a)

Petitioners purport to discern a difference in the construction of § 2-207 of the Uniform Commercial Code between the Tenth Circuit's decision herein, and in a case decided in 1962 by the First Circuit Court of Appeals, styled *Roto-Lith, Ltd.* v. *F. P. Bartlett & Co.*, 297 F.2d 497 (1st Cir. 1962). A review of *Roto-Lith* shows there is no conflict in the two opinions.[3] Factually, however, the two cases are not analogous. *Roto-Lith* was a breach of warranty action. The First Circuit held, under Massachusetts law,[4] that the

[3] "Its purpose [*i.e.*, § 2-207] was to modify the strict principle that a response not precisely in accordance with the offer was a rejection and a counteroffer. [Citations omitted] Now, within stated limits, a response that does not in all respects correspond with the offer constitutes an acceptance of the offer, and a counteroffer only as to the differences." *Roto-Lith, Ltd.* v. *F. P. Bartlett & Co.*, 297 F.2d 497, 500 (1st Cir. 1962).

[4] "The first question is what law the Massachusetts court would look to in order to determine the terms of the contract." *Id.* at 499.

plaintiff was bound by the disclaimer of warranties in the defendant's acknowledgment of the order.

More to the point is the fact that petitioners' reliance on this kind of argument sharply demonstrates the lack of merit in their Petition. Even assuming, *arguendo*, a difference in the interpretation of § 2-207 by the Tenth Circuit applying Oklahoma law, and the First Circuit applying Massachusetts law, such difference could not provide a basis for review on writ of certiorari. There is no federal common law and federal courts are bound to follow the controlling law of the respective states in deciding these cases, regardless of whether an interpretative "conflict" develops. As stated in *Erie Railroad Company* v. *Tomkins*, 304 U.S. 64, 82 L.Ed. 1188 (1938):

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts." 304 U.S. at 78.

The court below sat, in effect, as an Oklahoma court, and was required to decide the case in accordance with Oklahoma law, not the law of Massachusetts or any other state.

The Court of Appeals for the Tenth Circuit correctly applied Oklahoma law to these Oklahoma contracts—there

is no contention by petitioners to the contrary. The decision of the Court of Appeals is based on Oklahoma contract law and turns on its own facts; it affects no one other than the litigants.

CONCLUSION

The Petition presents no issue warranting review by this Court. It should be denied.

Respectfully submitted,

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December, 1976

CERTIFICATE OF SERVICE

I hereby certify that the following named parties,

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required by law to be served in this case, were this day mailed copies of the foregoing Brief in Opposition, postage prepaid.

Dated: ..... , 1976.

.....
Burck Bailey
Attorney for Respondent